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ALEXANDER L. STEVAS

No. 81-2332

In the Supreme Court of the United States

OCTOBER TERM, 1983

NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY, ETC., PETITIONER

v.

CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY MEMORANDUM FOR THE FEDERAL RESPONDENT URGING REVERSAL

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In our opening brief we explained that neither the language nor the legislative history of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, evinces any intention on the part of Congress to abrogate the prevailing common law rule under which a utility that locates its lines in a public right-of-way pursuant to a municipal license is expected to relocate its lines at its own expense when public convenience or necessity so requires. Several points raised by respondent warrant brief comment.

1. Respondent misapprehends (Br. 7-8) our argument (HUD Br. 30-32) that it has not "move[d]" any of the equipment that constituted its lines in their former location to their new location, and accordingly cannot qualify as a

"displaced person" under Section 101(6) of the Act, 42 U.S.C. 4601(6). The flaw we identified in respondent's claim is not, as respondent suggests, that it reaped the salvage value of the electrical cables it removed from service, but that neither those cables, nor any other part of the equipment in use in the former lines, was employed at the new locations. Thus, contrary to respondent's suggestion (Br. 7), our argument creates no incentive to waste salvage value.

2. Respondent does not respond directly to our argument (HUD Br. 33-40) that the *construction* of new utility lines is so far outside the ordinary meaning of the statutory term "mov[ing] * * * personal property" (Section 101(6), 42 U.S.C. 4601(6); see also Section 202(a)(1), 42 U.S.C. 4622(a)(1)) that Congress should not be understood thereby to have swept away the settled rule of state law placing relocation costs on utilities, absent some affirmative evidence of legislative intent to accomplish that result. Instead, respondent now relies (Br. 8) on other language in the pertinent provisions referring to one who "moves" himself. But this alternative statutory formulation is no more susceptible of the reading respondent urges than the statutory language addressed to moving of personal property. Neither can fairly be read to contemplate the kind of capital *construction* for which respondent seeks compensation.[1] Certainly, neither is sufficiently clear that it should be read to abrogate established doctrine and unsettle existing relationships.[2]

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[1]Respondent appears to concede (Br. 17), albeit by indirection, that, as we have suggested (HUD Br. 40-42), at least a significant part of its claim is for the cost of construction.

[2]We note the pendency of S.531, 98th Cong., 1st Sess., which would amend the Act so as to explicitly address the status of utilities thereunder. As passed by the Senate on May 20, 1983, the bill would make clear that no relocation assistance is due in the circumstances of this case. See 129 Cong. Rec. S7249, S7250 (Section 202(d)) (daily ed.

In any event, it is scarcely clear that respondent has "moved" itself in the sense Congress contemplated in the language upon which respondent relies. Undoubtedly, this language, coupled with Section 202(a)(2), 42 U.S.C. 4622(a)(2), provides for the situation in which transfer of tangible property that was in service in a former location —as, for instance, a commercial establishment — is not economically efficient. But even in the unusual situation in which not a single item of personal property is transferred, the most important asset of many commercial establishments — intangible good will — is "move[d]" when premises such as an office or a store are relocated. But the relocation of isolated utility lines, which have no associated good will, and have no value separate and apart from the rest of the distribution network and switching equipment to which they are attached, can scarcely be regarded as the moving of a discrete business entity. And respondent offers no evidence that this was within the scope of congressional contemplation. Undoubtedly, if one were to "seize the word" at issue — "moves" — "out of its context and give it the broadest possible definition" (*Metropolitan Edison Co.* v. *People Against Nuclear Energy*, No. 81-2399 (Apr. 19, 1983), slip op. 5), respondent's interpretation might be a colorable one. But the tools of statutory interpretation do not include the shoehorn; the object of the enterprise is simply to discern Congress's intent.

3. Respondent insists (Br. 9-15) that all of its facilities removed or abandoned in place were tangible personal property. For the reasons previously stated (HUD Br. 32-33 n.29) — which respondent has not addressed — it is highly

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May 20, 1983). The detailed provisions of the proposed amendment to the Act providing for payment of relocation assistance to utilities in certain other circumstances stand in marked contrast to the bare language of the present statute upon which respondent relies (see HUD Br. 46-47).

unlikely that this is a correct reading of the controlling Virginia law as to respondent's permanently installed conduits, and especially as to its manholes, which resemble nothing so much as underground buildings. But even if respondent were correct in its reading of state law, the unique and marginal nature of the equipment involved, which has many of the attributes of immovable fixtures, suggests that Congress never contemplated the application of the Act to construction of substitute facilities for utility lines located pursuant to municipal licenses in the public streets.[3]

4. Respondent now suggests (Br. 33-34) that if our interpretation of the relocation assistance provisions of the Act should prevail, Section 302 of the Act, 42 U.S.C. 4652, would require the displacing agency to condemn and pay just compensation for the utility equipment abandoned in place. As with respondent's main argument, it is acknowledged that this result was not within Congress's objectives. Respondent nevertheless suggests that the plain statutory language allows no other conclusion — however unintended the result may be.

We cannot agree. Section 302 does not directly address the question of *compensation* at all. Rather, it assures the owners of buildings and real property interests located on condemned land that they are not left with an unusable remnant, by requiring that their interests, too, be *acquired*. But it is settled state law that respondent simply had no

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[3]Although Congress seems to have assumed that state law would delineate fixtures from movable personalty for purposes of the Act, it seems unlikely that Congress intended to allow so significant a question as the reimbursability of utility relocation costs to turn on the vagaries of state law adopted for other purposes.

compensable real property interest in the street locations it formerly occupied (see HUD Br. 21-24). Accordingly, there is nothing to be acquired here and no compensation is due.[4]

For the foregoing reasons and those stated in our opening brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

REX E. LEE
Solicitor General

SEPTEMBER 1983

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[4]To the extent that respondent's equipment became affixed to the land under state law, it may be regarded as real property. But that interest is not a compensable one under state law. In any event, the measure of compensation for any such acquisition would not be the cost of substitute facilities — the measure claimed here. See *United States* v. *564.54 Acres of Land*, 441 U.S. 506 (1979).

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